

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RBW STUDIO LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 23-1243-MN
)	
BOHA STUDIOS LLC,)	
)	
Defendant.)	

PLAINTIFF’S MOTION TO DISMISS UNDER RULE 41(a)(2)

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff, RBW Studio LLC, moves to voluntarily dismiss this action without prejudice.

I. LEGAL STANDARD

Under Federal Rule of Civil Procedure 41(a)(2), “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Dismissals under Rule 41(a)(2) are granted without prejudice, unless a court finds otherwise. Fed. R. Civ. P. 41(a)(2). The decision to order a dismissal pursuant to Rule 41 is subject to the Court’s discretion. *Ferguson v. Eakle*, 492 F.2d 26, 28 (3d Cir. 1974). Third Circuit law favors the grant of voluntary dismissals. *See In re Paoli R.R. Yard PCB Litig.*, 916 F.2d 829, 863 (3d Cir. 1990). A motion for voluntary dismissal should be granted unless the dismissal will result in legal prejudice to the defendant. *Sanitec Indus., Inc. v. 2 Sanitec Worldwide, Ltd.*, 2006 WL 890880, at * 1 (D. Del. Apr. 3, 2006).

II. ARGUMENT

On December 5, 2023, Defendant, BOHA Studios LLC, responded to the original Complaint in this action with an answer and motion to dismiss *pro se*. (D.I. 7). On December 6, 2023, the Court issued an Order for Defendant to obtain counsel, for such counsel to enter their

appearance, and for counsel to file a corporate disclosure statement pursuant to Fed. R. Civ. P. 7.1. (D.I. 8). Defendant failed to comply with the Court's Order and no counsel for Defendant has appeared in this action. Defendant has not responded to Plaintiff's First Amended Complaint (D.I. 13). Notwithstanding, Defendant's unauthorized use of Plaintiff's copyrighted images and trade dress on the e-commerce Shopify platform continued over the course of last year. During that time, the underlying action was instrumental in facilitating requests to Shopify to remove Plaintiff's protected images from their online platform. *See* Ex. 1.

In November of 2024, counsel became aware of another website using Plaintiff's protected images, www.wenche.co. This website appears to be run by the same individuals as BOHA, as both share the same contact phone number, mailing address and contact person surname. When Plaintiff discovered this website, it promptly contacted Shopify and requested that it remove Plaintiff's protected images from its platform. Shopify removed the protected images upon a showing of this action and connection between the two entities. *See* Ex. 2.

III. CONCLUSION

In view of Shopify's cooperation and removal of Plaintiff's protected images from its platform, Plaintiff moves to voluntarily dismiss this action. Plaintiff respectfully requests that the action be dismissed without prejudice in view of what appears to Plaintiff to be a pattern of conduct in connection with the unauthorized use of Plaintiff's protected images.

ASHBY & GEDDES

/s/ Andrew C. Mayo

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Attorneys for Plaintiff

Dated: January 29, 2024

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2025, the attached **PLAINTIFF'S MOTION TO DISMISS UNDER RULE 41(a)(2)** was served upon the below-named counsel of record at the address and in the manner indicated:

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/s/ Andrew C. Mayo

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